

APPENDIX G

SHIRLEY NON-ZONING WETLANDS BYLAW

1. **Purpose and Application:** The purpose of this Bylaw is to supplement the Commonwealth of Massachusetts Wetlands Protection Act, to further protect the wetlands, related water resources, and adjoining land areas in the Town of Shirley by regulating activities likely to have significant or cumulative effect upon resource area values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water quality, water pollution control, fisheries, wildlife habitat, and rare species habitat deemed important to the community. This Bylaw is intended to utilize the Home Rule authority of the Town to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the Wetlands Protection Act (M.G.L. Chapter 131, Section 40) and Regulations (310 CMR 10.00) thereunder.

The definitions and forms, as well as the plan, notice, and hearing requirements utilized under the Wetlands Protection Act shall continue to be applicable, however additional application forms may be required. The Shirley Conservation Commission is hereby designated as the enforcing authority for all matters within the jurisdiction of this Bylaw.

2. **Jurisdiction and Resource Protection Setback:** Except as permitted by the Conservation Commission or as provided in this Bylaw, no person shall commence to remove, fill, dredge, or discharge into, or otherwise alter the following resource areas: any freshwater wetlands; marshes; flats; wet meadows; bogs; swamps; vernal pools; banks; lakes; ponds of any size; rivers; streams; creeks; beaches; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water ; and the one hundred (100) foot Buffer Zone to any of the aforementioned resource areas or lands abutting any of the aforesaid resource areas. Said resource areas shall be protected whether or not they border surface waters. In addition to the requirements of the Wetlands Protection Act, there shall be a 25-foot-wide undisturbed, vegetated strip of naturally occurring plant species maintained between wetland resource areas (310 CMR 10.02(1), excluding land subject to flooding and riverfront area) and activities, as defined in the Wetlands Protection Act Regulations. In addition, no structures shall be permitted within 40 feet of any wetland in order to provide for the aforementioned 25-foot buffer and safe and adequate access around said structures. The purpose of the 25-foot undisturbed strip is to filter out pollutants and sediment before they reach waterways, to help with floodwater absorption, and to support wildlife habitat. This additional requirement shall apply to all activities subject to the Wetlands Protection Act, except the following:
 - a. Activities with either current Board of Health permits, non-expired Orders of Conditions, or non-expired Determinations of Applicability as of March 21, 2005, or activities for which complete Notices of Intent or Requests for Determination have been submitted, but not acted upon, prior to March 21, 2005.
 - b. "Limited projects" as defined by the Wetlands Protection Act Regulations General Provisions 310 CMR 10.00. These projects, more particularly described in 310 CMR

10.53(3), include but are not limited to public utilities, public roadways, agricultural projects, water-dependent uses, and access driveways and roadways.

- c. "Exempt Activities" as defined by the Wetlands Protection Act Regulations 310 CMR 10.58(6). These include, but are not limited to, the maintenance of existing landscaping, such as lawn mowing.
- d. Emergency projects, as defined in 310 CMR 10.06.
- e. Repairs to or replacement of an existing sewage disposal system, including required grading allowed under 310 CMR 10.03(3).
- f. Activities determined by the Conservation Commission to have no adverse effect on resource area values. The burden of proof for such a finding is on the applicant.
- g. Activities on any lot legally in existence prior to March 21, 2005.

Waivers from the 40-foot setback and the 25-foot buffer requirements in the Bylaw may be granted where public benefits, such as health and safety, outweigh any adverse effect on resource values. The burden of proof for such a finding is on the applicant.

- 3. **Filing Fees:** After due notice and public hearing, the Commission may promulgate rules and regulations, including a filing fee schedule, to effectuate the purposes of this Bylaw. Notice of the time and place of the hearing shall be given by the Conservation Commission not less than fourteen (14) days prior to the hearing by publishing in a newspaper of general circulation (in Shirley) and by posting at the Town Offices. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Bylaw.
- 4. **Third Party Review:** In addition to any filing fee imposed by this Bylaw, the applicant shall reimburse the reasonable costs and expenses borne by the Commission for specific expert engineering and consulting services deemed necessary by the Commission, provided that the scope of the application meets the criteria set forth below. The amount of the reimbursement fee shall be based on the standard set forth below.

The Commission is authorized to charge this site and/or design review reimbursement fee when the Commission determines that a Notice of Intent, Request for Determination, or Certificate of Compliance involves any of the following: 500 square feet or greater of alteration of Freshwater Wetlands; 50 linear feet or greater of alteration of a Bank, Stream, or River; 500 square feet of Land Under Bodies of Water; discharge of any pollutants into surface or ground waters of any resource area under this Bylaw; or construction of a detention or retention basin or other drainage device.

Said specific expert engineering and consultant services may include but are not limited to consultants' overhead and office expenses required to process said Notices, Requests, and Certificates; copying plans and technical submittals for further review; subcontracting for professional services; mileage; wetland survey and delineation; hydrogeologic and drainage analysis; purchase or borrowing of materials; wildlife habitat, rare species, shellfish and fisheries evaluation; and environmental or land use legal consultation.

Said reimbursement fee shall be paid by the applicant within thirty (30) calendar days of receipt of a written request from the Commission. Said payment may be required by the Commission at any point in the reviewing or deliberating processes but not before the Commission has provided the applicant with a written estimate of the cost of the services to be provided. The fee shall be paid to the Town and deposited into a special account established under Chapter 44, Section 53G of the General Laws and shall be expended by the Commission for services approved by the Commission at a public meeting.

In setting the amount of said reimbursement fee, the Commission shall utilize the following standard: the fee shall equal the amount of the actual bills for all expenses incurred for the File Number that are submitted by an expert engineer or consultant.

5. **Appeals:** In the event that any person has been aggrieved by a decision of the Shirley Conservation Commission under this Bylaw, or by its failure to act thereunder, such person may appeal under M.G.L. Chapter 249, Section 4.
6. **Severability:** The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination that previously has been issued.
7. **Relationship to the Wetlands Protection Act:** This Bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (M.G.L. Chapter 131, Section 40) and Regulations (310 CMR 10.00) thereunder. Unless otherwise stated in this Bylaw, the areas of jurisdiction, definitions, provisions, procedures, and performance standards of the Wetlands Protection Act (M.G.L. Chapter 131, Section 40) and Regulations (310 CMR 10.00) as in effect on February 23, 2005 shall continue to apply.
8. **Enforcement:**
 - a. The filing of a Notice or Request shall constitute the consent of the owner and the grant of authority for the Commission, its agents, officers, and employees to enter upon privately owned land for the purpose of performing their duties under this Bylaw and to make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary.
 - b. The Commission shall have the authority and duty to enforce this Bylaw, its regulations, and Orders of Conditions issued hereunder by Enforcement Orders and civil and criminal court actions.
 - c. When the Commission determines that violation of this Bylaw has occurred, it may request the Board of Selectmen and the Town Counsel to take legal action for enforcement under civil law. In addition, the Commission may request the Chief of Police or other authorities to take legal action for enforcement under criminal law.
 - d. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.
 - e. Any person who violates any provision of this Bylaw may be punished by a fine of not more than three hundred dollars (\$300.00) per offense. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision

of the Bylaw, regulations, or Order of Conditions violated shall constitute a separate offense.

- f. In the alternative to criminal prosecution, the Commission may elect to utilize the non-criminal disposition procedure set forth in Massachusetts General Laws Ch. 40, Sec. 21D, in which case the penalty shall be as follows:

First offense:	\$ 25.00
Second offense:	\$100.00
Third and subsequent offenses:	\$300.00
- g. No person shall remove, fill, dredge, or alter any Area Subject to Protection under this Bylaw without the required authorization, or cause, suffer or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with an Enforcement Order issued pursuant to this Bylaw. Each day such violation continues constitutes a separate offense.
- h. Any person who purchases, inherits, or otherwise acquires real estate upon which work has been done in violation of the provisions of this Bylaw or in violation of any Order issued under this Bylaw shall forthwith comply with any such Order or restore such real estate to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against such person unless such action is commenced within three (3) years following the recording of the deed or the date of the death by which such real estate was acquired by such person.